

IN THE HIGH COURT OF SINDH AT HYDERABAD

C.P. S-456 of 2023 : Zakir Hussain vs.
Mst. Safia Khokhar & Others

For the petitioner : Mr. Muhammad Suleman Unar, Advocate.

Date of hearing : 06.12.2023.

Date of announcement : 06.12.2023.

ORDER

Agha Faisal, J. Notice of this application was issued on 29.11.2023 and in view of the arguments articulated, the application is allowed and the petition is restored. Learned counsel is directed to address the Court on maintainability.

Briefly stated, Family Suit 629 of 2021 was allowed vide judgment dated 22.3.2023 by the Civil/Family Judge VIII Hyderabad. The present petitioner filed Family Appeal 62 of 2023 before IX Additional District Judge Hyderabad and vide judgment dated 07.09.2023 the judgment of the trial Court was maintained with modification. The present petition assails the respective judgments.

Learned counsel was confronted with the maintainability hereof in view of Supreme Court's judgments in *Hamad Hasan*¹ and *Arif Fareed*², which disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument articulated was that the evidence was not appreciated by the respective forums in its proper perspective, hence, the exercise be conducted afresh in writ jurisdiction.

Heard and perused. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments appear to be well-reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*⁵ and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot

¹ Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

² Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

³ Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

⁴ Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

⁵ Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*⁶.

In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁷.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan* and *Arif Fareed* and even otherwise no case is made out to interfere in respect of the findings on merit. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed along with listed application/s.

Judge

A.Rasheed/stenographer

⁶ Per *Amin ud Din Ahmed J* in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

⁷ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.